SUPREME COURT, U. S.

JAN 20 1969

JOHN F. DAVIS, CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 832

STATE OF OREGON, Ex Rel WESTERN SEED PRODUCTION CORPORATION,

Petitioner,

v.

J. R. CAMPBELL, as Judge of the Circuit Court of the State of Oregon for Malheur County,

Respondent.

REPLY BRIEF OF PETITIONER ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OREGON

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To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States

Comes now the petitioner herein and in response to respondent's brief in opposition submits the following:

REPLY TO RESPONDENT'S ARGUMENT

(a) Re Rule 19

The record clearly establishes that petitioner did not *literally* conduct activities within the State of Ore-

gon. It did not even project itself into the state by the use of the mails, telephones or advertising media.

Respondent does not deny this, but relies upon the allegation that petitioner propagated and multiplied seed with knowledge that it would be used by growers in Oregon and Idaho, and that the use of seed in Oregon thereafter resulted in a claim. The Oregon Court either concluded that petitioner had purposefully availed himself of the privilege of conducting activities *within* the forum (a conclusion probably not in accordance with the decision of this Court in *Hanson* v. *Denckla*, 357 U.S. 235, 78 Sup. Ct. 1228, 2 L. Ed. 1283 (1958)) or such Court determined that the case presented something not theretofore determined by this Court.

Obviously, the requirements of rule 19 of this Court are satisfied.

The authors of the opinions, mostly Federal Judges, of the decisions cited on Page 12 of the petition in this Court express the view that the rule applied by the Oregon Court is not in accordance with the "applicable decisions of this Court" (Paragraph (a), Rule 19). The writers of the opinions relied upon by the Oregon Court and cited commencing on Page 11 of the subject petition before this Court apparently have concluded that cases such as the one at bar involve a question "not theretofore determined by this Court" (Rule 19), which question, if presented to this Court, would be, in their view, decided like the Oregon case at bar.

(b) Re The Sufficiency of the Record

It is apparent from matters emphasized in respondent's "statement of the case" (Resp. Br. 2) that respondent contends that an entity can be said to have conducted activities within the forum when (1) the item is produced with the knowledge that it will be used in the forum; (2) its production is not an isolated transaction, and (3) substantial use is made in the forum state.

Assuming, for the purposes of argument, the correctness of respondent's theory (that is that there need not be contact between the defendant and the forum other than the presence of defendant's goods within the forum) it is significant that the record does not contain the facts essential for jurisdiction under this theory. The record before respondent was silent as respects whether or not petitioner's activity was an isolated transaction. Moreover, the record before the Oregon Supreme Court contained nothing to indicate the extent to which petitioner's product was used in Oregon.[1] Surely, the person seeking to establish jurisdiction has the burden of alleging the jurisdictional facts.

(c) Incompleteness of Petitioner's Brief

Petitioner would like the opportunity to extensively brief the question as to whether or not merely "economic losses" should afford a basis for jurisdic-

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[1] Contrary to the statement appearing at Page 2 of respondent's brief, the reference, *allunde* the record, to the number of similar cases before the Trial Judge appeared at Page 16 of respondent's "reply brief" to the Oregon Supreme Court.

tion, assuming that respondent's theory expresses the view of this Court.

Petitioner (in an effort to heed the admonition to be brief) did not, as respondent's counsel have pointed out, completely document the contention that the Commerce Clause should protect petitioner in this instance. Nor did petitioner effectively articulate the view that it was denied due process of law when the State of Oregon applied procedural rules to this case different from those applied to similar cases (Page 15, Pet. Br.). It is respectfully submitted, however, that these contentions represent additional factors illustrating "special and important" reason for a more complete briefing of this case (in accordance with this Court's Rule 19) and show an offense to traditional notions of fair play and substantial justice.

CONCLUSION

While it is true that a denial of a petition for certiorari does not constitute a decision approving the law applied in the lower Court, respondent's brief makes clear that many already assume that this Court has decided that everyone who participates in the production of an item with the knowledge that the item will be used elsewhere is subject to the jurisdiction of every state of use contemplated by the producer. A denial of this petition cannot help but serve to reinforce those who share this view

It is respectfully submitted that the writ should be granted.

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